

ESTTA Tracking number: **ESTTA79375**

Filing date: **05/04/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92042991
Party	Defendant Elle Belle, LLC Elle Belle, LLC 1020 6th Avenue New York, NY 10018
Correspondence Address	BALRAM KAKKAR, ESQ. KAKKAR & KADISH 261 MADISON AVENUE, 25TH FLOOR NEW YORK, NY 10016 hui@kakkarkadish.com
Submission	Answer
Filer's Name	HUI RI KIM
Filer's e-mail	hui@kakkarassociates.com
Signature	/HUI RI KIM/
Date	05/04/2006
Attachments	Motion accept late answer.pdf (8 pages)(411657 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No.: 2,657,739

Registered: December 19, 2002

Trademark: **ELLE BELLE**

-----X	:	
Hachette Filipacchi Presse,	:	
	:	
Petitioner,	:	MOTION TO ACCEPT
	:	LATE FILED ANSWER
-v-	:	
	:	Cancellation No.: 92042991
Elle Belle, LLC	:	
	:	
Respondent.	:	
-----X		

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Respondent, Elle Belle, LLC, (“Elle Belle”) a New York limited liability company, with an address at 1020 6th Avenue, New York, N.Y. 10016, by its attorneys, Kakkar & Associates, submits this motion to request that the Board accept Respondent’s late filed Answer to Petitioner’s Amended Petition to Cancel (attached as Exhibit A).

On December 12, 2005, Petitioner, Hachette Filipache Presse (“Hachette”), filed a Motion to Amend Petition to Cancel and Suspend Proceedings with an Amended Petition to Cancel attached as an exhibit. By notice dated February 15, 2006 (attached as Exhibit B), the Board determined that Petitioner’s Amended Petition to Cancel would be its operative pleading and ordered Respondent to file an answer to the Amended Petition to Cancel within thirty (30) days thereof.

The reason for Respondent’s request that the Board accept its late filed Answer to Petitioner’s Amended Petition to Cancel is that Respondent never received the Board’s notice dated February 15, 2006. Therefore it was unaware of the Board’s finding in regards to the

Petitioner's Motion to Amend Petition to Cancel and Suspend Proceedings and the deadline set by the Board upon the Respondent.

While the Petitioner would not suffer any hardship should the Board accept Respondent's attached answer, Respondent would suffer great hardship if Respondent's Answer is rejected by the Board. Moreover, on numerous occasions per the Petitioner's request, Respondent has agreed to extend discovery, testimony and other dates throughout this proceeding.

WHEREFORE, Respondent respectfully prays that the attached Answer to Petitioner's Amended Petition to Cancel be accepted.

Respectfully Submitted,

ELLE BELLE, LLC

By: 

Hui Ri Kim, Esq.

Kakkar & Associates

261 Madison Avenue, 25th Fl.,

New York, N.Y. 10016

(212) 867 2969

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No.: 2,657,739

Registered: December 19, 2002,

Trademark: **ELLE BELLE**

-----X		
Hachette Filipacchi Presse,	:	
	:	
Petitioner,	:	ANSWER TO PETITIONER'S
	:	AMENDED PETITION TO
-v-	:	CANCEL
	:	
Elle Belle, LLC	:	Cancellation No.: 92042991
	:	
Respondent.	:	
-----X		

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

Respondent, Elle Belle, LLC, ("Elle Belle") a New York limited liability company, with an address at 1020 6th Avenue, New York, N.Y. 10018, by its attorneys, Kakkar & Associates, responds to the Amended Petition to Cancel ("Petition") filed by the Petitioner, Hachette Filipache Presse ("Hachette") as follows:

1. Responding to the allegations in paragraphs 1, 2, 3, 4, 5, 6, 7 and 13 of the Petition, Respondent has insufficient knowledge and information to admit or deny the allegations contained therein.
2. Respondent admits that the allegations in paragraphs 8 and 9 of the Petition.
3. Responding to the allegations contained in paragraph 10 of the complaint, Respondent incorporates each of its answers to the allegations in paragraphs 1 to 9 as if fully restated herein.
4. Respondent denies the allegations in paragraphs 11, 12, 14 and 16 through 23 of the Petition.

5. Responding to the allegations contained in paragraph 15 of the complaint, Respondent incorporates each of its answers to the allegations in paragraphs 1 to 4 as if fully restated herein.

AFFIRMATIVE DEFENSES

1. Petitioner's claims are barred by the principal of laches.
2. Respondent's marks are sufficiently distinct such that the any likelihood of confusion between the two marks is at most remote.
3. Respondent's marks are sufficiently distinct such that any likelihood that the Respondent's mark would result in any dilution of Petitioner's mark is remote.
4. Petitioner's claims are barred because the interests asserted by Petitioner do not constitute protectable interests as a matter of law.
5. Petitioner's claims are barred because Petitioner has sustained no actual damages.
6. Petitioner has abandoned any rights to the mark "Elle" by its failure to use said mark nationwide in commerce in international class 25 in which Respondent's mark is registered.
7. Petitioner has abandoned any rights to the mark "Elle" by its failure to use the mark nationwide in connection with the goods and services identified in Petitioner's Registration No. 0862001, including "dresses, cloaks, capes, skirts, jackets, suits, two-piece costumes or suits, coats, sweaters, bodices, pullovers, house-gowns, slips, combination underwear, petticoats, corsets, sheath corsets, bust-bodices, brassieres, undershirts, underwear, bathing suits, jodphurs, knickers, stockings, ties, scarves, square shawls, hats, caps, gloves, and slippers. As such Petitioner has no rights to the mark "Elle" for use in said goods and services and there is no likelihood of confusion between Petitioner's "Elle" marks and Respondent's mark "Elle Belle."

8. Petitioner has abandoned any rights to the mark "Elle" by its failure to use the mark nationwide in commerce in connection with the goods and services identified in Petitioner's Registration No. 1348158, including, "footwear-namely, shoes, boots, slippers, sandals and clogs" and as such there is no likelihood of confusion between Petitioner's "Elle" marks and Respondent's mark "Elle Belle."

9. Petitioner has abandoned any rights to the mark "Elle" in connection with lingerie by its failure to use the mark nationwide in connection with lingerie since it obtained Registration No. 1454393 and as such there is no likelihood of confusion between Petitioner's "Elle" marks and Respondent's mark "Elle Belle."

WHEREFORE, Respondent prays that the Petition be dismissed and the relief sought by the Petitioner be denied.

ELLE BELLE, LLC

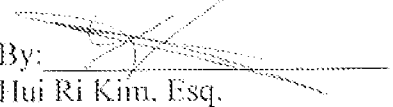
By: 
Hui Ri Kim, Esq.
Kakkar & Associates
261 Madison Avenue, 25th Fl.,
New York, N.Y. 10016
(212) 867 3065

EXHIBIT B

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: February 15, 2006

Cancellation No. 92042991

HACHETTE FILIPACCHI PRESSE

v.

Elle Belle, LLC

Jyll S. Taylor, Attorney:

Petitioner's combined motion, filed December 12, 2005, to amend the petition for cancellation to add a claim of fraud, reset the testimony periods and suspend this proceeding pending the outcome of the motion to amend is granted as uncontested.¹ See Trademark Rule 2.127(a). Accordingly, petitioner's amended petition for cancellation is now petitioner's operative pleading in this case. Respondent is allowed until **thirty days** from the mailing date of this order to file an answer to the amended petition.

Trial dates are reset as indicated below.

THE PERIOD FOR DISCOVERY TO CLOSE: CLOSED

30-day testimony period for party
in position of plaintiff to close: May 31, 2006

¹ In view of the Board's December 15, 2005 suspending this proceeding, petitioner's motion to suspend will be given no further consideration.

30-day testimony period for party
in position of defendant to close:

July 30, 2006

15-day rebuttal testimony period
to close:

September 13, 2006

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.


Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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CERTIFICATE OF MAILING

I, Hui Ri Kim, hereby certify that on May 4, 2006, this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

Hughes Hubbard & Reed, LLP
Kristin Whiting, Esq.
One Battery Park Plaza
New York, N.Y. 10004-1482



Hui Ri Kim

Dated: May 4, 2006
New York, NY